cases, and as involving an unwarranted distrust in the capacity of legal tribunals to get at the truth.

The courts as a rule do not expressly recognize that the ultimate question in such cases is one of expediency, but base their decisions on other grounds. A distinction has apparently been drawn between external effects of shock and those purely internal. Thus if the plaintiff faints the ensuing damage is too remote. *Victorian Ry.* v. *Coultas*, *supra*. Yet if external injury is sustained in jumping off a coach he may recover. *Jones* v. *Boyce*, 1 Stark. 493. If his horse bursts a blood vessel and dies the owner can get no compensation. *Lee* v. *Burlington*, 85 N. W. Rep. 618. But if it runs away the owner is recompensed for resulting damage. *Wilkins* v. *Day*, *L. R.*, 12 Q. B. D. 110. This is not a sound distinction. All organs, internal and external, nervous and muscular, are equally physical, and should be equally protected by the law; and the psychological fact should be recognized that a manifestation of fear through the nervous system is as proximate an effect as a manifestation through the muscular system.

Granting that logically physical damage is often the direct result of nervous shock, though not contemporaneous with it, the question still remains, is it wise to permit recovery without proof of impact or of immediate palpable injury? The objection that the practical application of the rule would be difficult is hardly convincing. It is not easy to translate any personal injury into terms of dollars and cents, yet courts and juries are doing it every day. The argument *ab inconvenienti* therefore is not insurmountable, and also it must be remembered that the plaintiff has not only to claim that he has suffered, but to prove it. It is urged by many that the courts would be flooded if such claims were allowed; and that three fourths of the claims would be fraudulent. Probably litigation would increase: possibly it should. Still, the threatened flood has not yet overtaken those courts which have granted relief. The principal case is a decided addition to the controversy both as a strong decision and for its sound logic. See 10 HARVARD LAW REVIEW, 387; 52 Cent. L. J. 339.

EASEMENTS OF LIGHT AND AIR OVER STREETS. — Much less favor has been extended to easements of light and air by the courts of this country than by those of England. It is everywhere held that the doctrine of ancient lights is not suited to the conditions of a growing country, and never became part of our common law. *Myers* v. *Gemmel*, 10 Barb. 537. Upon similar grounds some courts have declined to follow the English doctrine of acquiring easements of light and air by implied grant. *Keats* v. *Hugo*, 115 Mass. 204; *Janes* v. *Jenkins*, 34 Md. 1, *contra*. Even if such a doctrine is accepted, the better opinion is that its application should be limited to cases where the easement is strictly necessary to the beneficial user of the estate granted. *Turner* v. *Thompson*, 58 Ga. 268. In regard to the rights of light and air over a highway, however, an exception is to be noted. A recent Maryland decision in enjoining the construction of an arch over a public street at the instance of one whose building would thereby have been darkened adopts the view that abutting landowners have an easement of light and air over a public highway. *Townsend* v. *Epstein*, 49 Atl. Rep. 629. This right in several jurisdictions is held to exist independently of the ownership of the

fee of the highway, and to constitute property within the meaning of the constitution. *Story* v. *New York Elevated R. R. Co.*, 90 N. Y. 122; *Adams* v. *Chicago, etc., R. R Co.*, 39 Minn. 286; *Garrett* v. *Lake Roland, etc., Co.*, 79 Md. 277, *contra*. It is said to arise even though the highway is established after the grant of the abutting property, *Barnett* v. *Johnson*, 15 N. J. Eq. 481; and not to extend over private ways. *Dexter* v. *Tree*, 117 Ill. 532. While it is undoubtedly desirable in closely settled communities that abutters should have an easement of light and air over the highway, it is not entirely clear from what source the easement is to be traced. It has been suggested that it is an implied easement appurtenant to the land arising by virtue of an implied agreement that if the lot be purchased the owner shall be entitled to the open space above the street. The difficulty with this suggestion is that it in no way explains the acquisition of an easement when the establishment of the highway is subsequent to the grant of the abutting property, nor the limitation of the doctrine to land upon public, as distinguished from private highways. A consideration of the objects and incidents of the creation of public highways may place the matter in a clearer light than an attempt to argue from the analogy of easements over private land. A public highway is established to facilitate intercourse between the public at large and the abutting landowners, an object best effected by permitting the public to pass freely over the road, and by enabling the abutters to build to its edge. As the abutters require an easement of light and air if they build to the edge of the highway, such an easement would seem as essential to the general purposes of the highway as that of public travel. Both easements, therefore, should be regarded as natural incidents to the creation of the highway, arising simultaneously and by virtue of their relation to the objects of that creation. Cf. *Adams* v. *Chicago, etc., R. R. Co.*, 39 Minn. 286. Such a view will at least support the desirable results that have been reached, without doing violence to well-settled principles of the law of property.

ANTICIPATORY BREACH OF CONTRACT AS EXCUSE FOR NON-PERFORMANCE. — The usual statement of the doctrine of anticipatory breach is to the effect, that when one party to an executory bilateral contract expresses an intention not to perform, the other party may treat the contract as broken and sue at once, or may ignore the repudiation, in which case the obligations upon each continue effective. *Frost* v. *Knight*, L. R. 7 Ex. 111. Illogical as it is to make a breach of contract depend on the promisee's election, considerations of convenience furnish perhaps a justification. At least so much of the doctrine of anticipatory breach as gives the right to sue immediately, is firmly established. *Roehm* v. *Horst*, 178 U. S. 1; 14 HARVARD LAW REVIEW, 433, note 4. But the alternative proposition, that the repudiation if not immediately acted upon is inoperative, has received almost no direct adjudication, although usually asserted as *dictum* where the right to sue immediately is recognized. In a recent case, however, the Supreme Court of Georgia treating the rule as established by these *dicta* decides that a repudiation by the plaintiff is no excuse for a subsequent non-performance by the defendant, when it is not shown that the defendant has elected to treat the contract as broken by the repudiation. *Smith* v. *Ga. Loan, etc., Co.*, 39 S. E. Rep. 410. One other direct decision where the point was raised in a